

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 24919 of 2002

02-09-2005

Between:

B.Koteswara Rao, S/o.Late Thataiah,
R/o.H.No.9/95, Parchur Road,
Inkolu, Prakasam Dist.,

..... PETITIONER

AND

The Prakasam District Cooperative Central Bank Ltd., rep. by its General Manager,

.....RESPONDENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 24919 of 2002

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a Mandamus declaring the action of the respondent-bank in not releasing the superannuity benefits to the petitioner as illegal and arbitrary.

The petitioner worked in the respondent-bank and retired from service on 30-06-2002 on attaining the age of superannuation. Prior to his retirement, the respondent-bank issued a charge memo No. Adm/Spinning Mills/A1-2001 dated 22-12-2001 to the petitioner for certain irregularities committed by him. Thereafter, an enquiry was ordered for the financial irregularities alleged to have been committed by the petitioner relating to the release of stocks from pledge to the Parchur Cotton Growers Co-operative Spinning Mills Ltd., Inkolli. It is stated that the respondent-bank

permitted the petitioner to retire from service on attaining superannuation vide proceedings dated 28-06-2002, subject to the findings of the enquiry ordered against him. As the retirement benefits have not yet been released, the petitioner made several representations to the respondent-bank requesting to release all the retirement benefits. The grievance of the petitioner is that though there is no provision of law and nowhere mentioned in the bye-laws of the respondent-bank to conduct and continue the disciplinary enquiry after retirement of the employee, the action of the respondent-bank in continuing the disciplinary proceedings and withholding the terminal benefits is illegal and arbitrary.

Heard both sides.

Learned counsel for the petitioner contended that though the petitioner retired from service subject to disciplinary action, but the rules do not provide for initiation or continuation of departmental proceedings after retirement. Therefore, the action of the respondent-bank in withholding the terminal benefits of the petitioner is wholly unsustainable. In support of his contention, learned counsel relied on the Judgment of this Court in W.P.No.22346 of 2003. Therefore, prays to allow the writ petition.

I have perused the material available on record.

On a perusal of the proceedings dated 28-06-2002 issued by the respondent-bank it is clear that the petitioner was directed to handover the charge of the post of the Manager to sri N.Prasada Rao, Staff Assistant on 29-06-2002 A.N. and retire from service and submit a copy of the charge list to Central Office. In the said order, the respondent-bank clearly mentioned that these orders would not prejudice any disciplinary action that may be contemplated/initiated against him.

As relied on by the learned counsel for the petitioner, in a similar case, a Single Judge of this Court by Judgment dated 31-08-2004 in W.P.No. 22346 of 2003 allowed the petition. For the purpose of convenience, it is appropriate to refer relevant portion of the above Judgment and it is thus:

“This court and the Apex Court in catena of decisions held that when once the employee retires from service either on attaining the age of superannuation or under the Voluntary Retirement Scheme, the relationship between the employer and the employee ceases to exist and in the absence of any regulations or rules authorising the employer to take or continue the disciplinary proceedings, the action of the respondents in proceeding with the enquiry against an employee even after his retirement is illegal and without jurisdiction. In the instant case, as the petitioner was

allowed to retire from the service, I am of the view that continuation of the said disciplinary proceedings are illegal and the petitioner is entitled for all retirement benefits.”

On appeal, a Division Bench of this Court by an order dated 23-11-2004 in W.A.No.1737 of 2004 while observing that in the absence of any statutory procedure enabling the Management to proceed with the departmental enquiry against an officer beyond the date of retirement, confirmed the Judgment in W.P.No. 22346 of 2003.

In the instant case, the respondent-bank did not choose to file any counter to substantiate their case. Apart from not filing any counter, the respondent-bank has not stated specifically under which Rules and Regulations or provisions, disciplinary proceedings can be continued against the petitioner even after his retirement.

Having regard to the facts and circumstances of the case and in the light of the observations made in the above Judgments of this court I am of the considered view that the petitioner is entitled to the terminal benefits.

Accordingly, the writ petition is allowed directing the respondent-bank to release the terminal benefits of the petitioner for which he is entitled. However, this order will not preclude the respondent-bank to proceed against the petitioner in accordance with law. No costs.

02-09-2005

Mjl/*

